when property or contract rights will be affected by its violation.[18] The decision in the principal case does not concern such rights, and, in view of the American authorities, it would appear that the court was justified in its holding.

EXPATRIATION.—The common law rule that allegiance was perpetual, and that no man had the right to expatriate himself without the consent of his native government,[1] was quite in accord with the almost universal view that there existed no inherent right of expatriation,[2] and was followed in many of the early American cases.[3] In view of the fact, however, that naturalization of aliens was encouraged in England and America, it was felt in both countries that it was illogical to refuse consent to expatriation; and hence each country has now given statutory consent thereto.[4] In most other countries this consent has likewise been accorded, by a declaration of the circumstances under which a native loses his nationality.[5] But it is an important restriction on this right, that an expatriate is not released from those obligations to his native country which have accrued before his emigration, and will be held bound to perform them, should he ever return.[6]

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[18]See Rockhill *v.* Nelson (1865) 24 Ind. 422; Kearny *v.* Buttles (1853) 1 Oh. St. 362; Treon *v.* Brown (1846) 14 Ohio 482.

[1]Proceedings against Macdonald (1747) 18 How. State Trials 858; see Calvin's Case (1608) 7 Rep. 1a, 13b, 25a; *cf. In re* Stepney Election Petition (1886) 17 Q. B. D. 54; 1 Hale, Pleas of the Crown, *68; 1 Bl. Comm. *369; Hall, International Law (6th ed.) 227.

[2]Hall, 232; Lawrence, International Law (4th ed.) § 96; Smith, International Law (4th ed.) 82.

[3]Williams' Case (C. C. 1799) 29 Fed. Cas. 1330; Ainslie *v.* Martin (1812) 9 Mass. 454; Shanks *v.* Dupont (1830) 28 U. S. 242; Hall, 230; see 13 Columbia Law Rev. 744; *contra,* Alsberry *v.* Hawkins (1839) 39 Ky. *177; 9 Op. Atty. Gen. 356 (1859); see Juando *v.* Taylor (D. C. 1818) 13 Fed. Cas. 1179; *cf.* Murray *v.* Schooner Charming Betsy (1804) 6 U. S. 64, 120.

[4]Act 33 & 34 Vict. c. 14, 6; Act 35 & 36 Vict. c. 39, 2; 15 Stat. 223. The American act characterizes expatriation as "a natural and inherent right." The Supreme Court has recently expressly refused to decide whether this is to be taken literally, or is merely the consent of our government to expatriation. Mackenzie *v.* Hare (1915) 239 U. S. 299, 309, 36 Sup. Ct. 106, 107. See 13 Columbia Law Rev. 744.

[5]8 Op. Atty. Gen. 139, 164 (1856); Hall, 232; Lawrence's Wheaton, International Law, 922; 1 Halleck, International Law (4th Eng. ed.) 436. While the Russian law is not entirely clear, it is possible that that country represents an exception. Hall, 234; Lawrence, § 96; 3 Moore, Digest of International Law, § 453.

[6]8 Op. Atty. Gen. 139, 146, 168 (1856); 9 Op. Atty. Gen. 356, 362 (1859); Davis, International Law (rev. ed.) 141, 143, 144. This question arises chiefly with reference to the duty of compulsory military training, in countries where that system obtains. If the obligation had accrued at the time of emigration, the expatriate may generally be compelled to serve, should he return to his native country. Lawrence, § 96; Lawrence's Wheaton, 922; Hall, 232. France apparently compels service, even if the emigration occurred before the obligation accrued. 3 Moore, 599. Under the present German law, a German who has resided abroad for ten years can be com-

For many years the United States has made a practice of settling questions of expatriation by treaties conceding and to a certain degree regulating the right.[7]

It is not, however, entirely settled in this country what acts constitute expatriation. Here, as in England,[8] and elsewhere generally,[9] it is unquestionably true that foreign naturalization, or the taking of an oath of allegiance to another country, expatriates a citizen.[10] While it has also been said that mere residence abroad, with intent to remain, is sufficient to work expatriation,[11] the better view seems to be that this is insufficient, and there must be, in addition, at least an intent to throw off the native allegiance.[12] On the other hand, it has often been held that there can be no expatriation without a change of domicil;[13] but this is apparently now not absolutely indispensable,[14] and there would seem to be no good reason why it should be accorded more than an evidentiary value. It is clear that the act of expatriation must be voluntary;[15] but, though the legislature cannot, by an arbitrary law, declare a person expatriated,[16] it may provide that the voluntary commission of a specific act by an individual

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pelled to serve in the army only in time of war, and apparently not at all, if he returns only for a transient visit. See *Ex parte* Weber [1916] 1 K. B. 280, aff'd in the House of Lords (1916) 32 T. L. R. 312.

[7]Malloy, United States Treaties, 45, 53, 60, 62, 80, 384, 434, 691, 698, 939, 949, 958, 1132, 1298, 1449, 1468, 1570, 1758, 1760, 1829, 1895, 1897; Charles, United States Treaties, 19, 23, 95. There are no treaties on this subject with Russia, France, or Italy.

[8]Act 33 & 34 Vict. c. 14, 6.

[9]Hall, 232; 1 Halleck, 436.

[10]34 Stat. 1228, § 2; Browne *v.* Dexter (1884) 66 Cal. 39; Jennes *v.* Landes (C. C. 1897) 84 Fed. 73. It has been said that naturalization in a foreign country is essential to expatriation, Jennes *v.* Landes, *supra*; 9 Op. Atty. Gen. 356, 359 (1859); see Ludlam *v.* Ludlam (1863) 26 N. Y. 356, 374; *contra,* Caignet *v.* Pettit (Pa. 1795) 2 Dall. 234; 14 Op. Atty. Gen. 295 (1873); but there would seem to be no good reason for this view. A qualified oath of allegiance, which does not involve a renunciation of native citizenship, may not cause expatriation. 3 Moore, § 468.

[11]*cf.* Lorenzo *v.* McCoy (1910) 15 Philippine 559, 590; Alsberry *v.* Hawkins, *supra.* It seems to be sufficient according to the law of several European countries. 1 Halleck, 436; Lawrence's Wheaton, 922. The acquisition of a foreign domicil, without the intent to return, expatriates a Frenchman. 14 Op. Atty. Gen. 295, 300 (1873); Lawrence's Wheaton, 922. The present German law declares any German who resides abroad for ten years expatriated, but redintegration is not difficult. See *Ex parte* Weber, *supra.*

[12]9 Op. Atty. Gen. 62 (1857); 14 Op. Atty. Gen. 295 (1873); State *v.* Adams (1876) 45 Iowa 99; State *ex rel.* Phelps *v.* Jackson (1907) 79 Vt. 504, 65 Atl. 657; Hammerstein *v.* Lyne (D. C. 1912) 200 Fed. 165, 171; see Juando *v.* Taylor, *supra.*

[13]Comitis *v.* Parkerson (C. C. 1893) 56 Fed. 556; Fish *v.* Stoughton (N. Y. 1801) 2 Johns. Cas. *407; 14 Op. Atty. Gen. 295 (1873); see Talbot *v.* Janson (1795) 3 U. S. 133, 169; The Santissima Trinidad (1822) 20 U. S. 283, 347.

[14]At least, not when an American woman marries a domiciled alien. Mackenzie *v.* Hare, *supra.*

[15]Jennes *v.* Landes, *supra*; Hardy *v.* DeLeon (1849) 5 Tex. *211, *235.

[16]See Burkett *v.* McCarty (1866) 73 Ky. 758; Mackenzie *v.* Hare, *supra.*

shall deprive him of his rights of citizenship.[17] Merely entering the military or naval service of a foreign nation is insufficient to cause expatriation.[18]

Under certain circumstances, the right to sever one's native allegiance is withheld. Thus, expatriation may not be made the cover for fraud;[19] nor may it be employed as the means or the excuse for the commission of a crime against the native country.[20] During a war in which the country is engaged, the right is entirely proscribed.[21] And a minor, by his own voluntary act, cannot expatriate himself; on reaching his majority, he is entitled to elect between the citizenship of the country of his birth and that of the country of his residence.[22]

A recognition of the tendency of a naturalized citizen to return to his native country,[23] has led to the introduction into the naturalization treaties to which the United States is a party of provisions that, when a naturalized citizen returns to the country of his original allegiance, intending to remain, he becomes expatriated; and most of the treaties provide that residence for two years there may be considered as *prima facie* evidence of such intention.[24] By an act[25] passed in 1907, two years' residence in the native country, or five years' residence in any other foreign country, is declared to raise the presumption of loss of citizenship. Construing this act in the recent case of *United States ex rel. Anderson* v. *Howe* (D. C., S. D. N. Y. 1916) 55 N. Y. L. J. 89, where the relator, a native of Sweden, naturalized in the United States, returned to Sweden and lived there more than two years, the court held that, in the absence of proof to the contrary, he was to be considered as expatriated and an alien. This decision overrules an Opinion of Mr. Attorney-General Wickersham,[26] who took the view that the presumption of non-citizenship in the Act of 1907 was meant only to relieve our government of the duty of protecting a citizen abroad after such two years' residence, and that, since the

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[17]For instance, the commission of a crime, such as desertion from the army, Huber *v.* Reily (1866) 53 Pa. 112; State *v.* Symonds (1869) 57 Me. 148; Wilson, International Law, § 46; *cf.* Burkett *v.* McCarty, *supra*, or the marriage of an American woman to a foreigner. Mackenzie *v.* Hare, *supra*; see 13 Columbia Law Rev. 744. The latter is the rule almost everywhere. Hall, 226.

[18]Wilson, § 46; 3 Moore, § 469. The Netherlands holds it sufficient. Wilson, § 46.

[19]See The Santissima Trinidad, *supra*, 348; Alsberry *v.* Hawkins, *supra*; *cf.* 14 Op. Atty. Gen. 295 (1873).

[20]Talbot *v.* Janson, *supra*, 165; The Santissima Trinidad, *supra*, 348; 8 Op. Atty. Gen. 139, 146, 168 (1856).

[21]34 Stat. 1228, § 2; Rex *v.* Lynch [1903] 1 K. B. 444; see The Dos Hermanos (1817) 15 U. S. 76, 98; *cf.* 8 Op. Atty. Gen. 139, 168 (1856).

[22]State *ex rel.* Phelps *v.* Jackson, *supra*; Lim Teco *v.* Insular Collector of Customs (1913) 24 Philippine 84; Hall, 222; *cf.* 34 Stat. 1229, § 6. This right of election seems to have existed even under the strict common law rule. See Ludlam *v.* Ludlam, *supra*, 372.

[23]*Cf.* 34 Stat. 601, § 15.

[24]Malloy, United States Treaties, *supra*; Charles, United States Treaties, *supra*.

[25]34 Stat. 1228.

[26]28 Op. Atty. Gen. 504 (1910).

necessity for this protection ceased on his return to America, the presumption ceased with it. The court's interpretation of the statute accurately follows its words, and appears to be unquestionably the proper one.

RECOVERY FOR UNAUTHORIZED REPETITION OF SLANDER BY THIRD PERSONS.—In actions for defamation, it has been settled by the courts and agreed by the text writers that the plaintiff cannot receive compensation for the damage which he sustains by reason of the repetition of the defamation by the hearer to another person, whether the words be actionable *per se*[1] or only on proof of special damage.[2] But to this generally recognized rule there are equally well recognized exceptions. The originator of the slander or libel is responsible for its repetition if he authorizes it,[3] or if he intends it,[4] or if the hearer is under such a duty to repeat it that the repetition is privileged.[5] Under the general rule, a recovery is denied for the repetition sometimes on the ground that to allow it would be to create a double liability, giving the plaintiff two actions for the same injury, one against the originator and one against the repeater;[6] for the repeater, unless his repetition is privileged, is at all events responsible for the consequences of his utterance.[7] But the reason usually advanced is that the repetition is not a natural, proximate, and reasonable result of the original utterance, but is an independent wrong committed by a third person, for which that third person is alone responsible.[8]

The first ground assigned in support of the general rule is hardly tenable. It amounts in effect to this: the first publisher is held liable, if the repeater is exempt; and the first publisher is exempt, if the repeater is liable. But the liability of one person cannot depend upon the non-liability of another. The responsibility of the originator

[1]Prime *v.* Eastwood (1877) 45 Iowa 640; Clifford *v.* Cochrane (1882) 10 Ill. App. 570; see Adams *v.* Cameron (Cal. 1915) 150 Pac. 1005.

[2]Odgers, Libel and Slander (5th ed.) 172, 177; Ward *v.* Weeks (1830) 7 Bing. 211; Age-Herald Pub. Co. *v.* Waterman (1914) 188 Ala. 272, 66 So. 16.

[3]Bond *v.* Douglas (1836) 7 C. & P. 626; Queen *v.* Cooper (1846) 8 Q. B. 533; Adams *v.* Kelly (1824) Ry. & Moo. 157.

[4]Ecklin *v.* Little (1890) 6 T. L. R. 366; Whitney *v.* Moignard (1890) 24 Q. B. D. 630; Odgers, Libel and Slander (5th ed.) 177.

[5]Clerk and Lindsell, Torts (6th ed.) 618, 673; Derry *v.* Handley (1867) 16 L. T. R. [N. S.] 263; but *cf.* Parkins *v.* Scott (1862) 6 L. T. R. [N. S.] 394.

[6]Mills *v.* Flynn (1912) 157 Iowa 477, 137 N. W. 1082; see Cates *v.* Kellogg (1857) 9 Ind. 506.

[7]In the Earl of Northampton's Case (1613) 12 Rep. 132, it was laid down as the rule that if at the time of his repetition the repeater of the defamatory words named the author, the former was not liable to any action. The reason upon which the rule was based was that, by naming the author of the slander, the repeater gave to the injured party the opportunity to bring an action against him. But the doctrine was criticized in later cases, and was finally repudiated in McPherson *v.* Daniels (1829) 10 B. & C. 263. It is now the law that the repeater of the slander cannot defend on the ground that, at the time of his utterance, he named the person from whom he heard it. Newell, Slander and Libel (3rd ed.) § 435 *et seq.*; see 15 Columbia Law Rev. 361.

[8]Terwilliger *v.* Wands (1858) 17 N. Y. 54; Gough *v.* Goldsmith (1878) 44 Wis. 262; Ward *v.* Weeks, *supra*.